



# Technical Review of the Draft Myanmar Land Acquisition Law 2017



Technical Review prepared by  
Ruwani Jayewardene and  
Ananadalal Nanayakkara  
Land Core Group  
February 2018

Funded By:



## Livelihoods and Food Security Trust Fund



## **Acknowledgements**

This review has been a collaborative effort and the authors wish to thank the various people who have helped during the course of the report, including Glenn Hunt and Laurien Petri at Land Core Group for compiling comments and setting the document layout, and providing useful feedback on the draft text, Vicky Bowman and the team at the Myanmar Centre for Responsible Business as well as Angela Reeman for their assistance in reviewing the document and providing useful feedback and also for their commitment to undertake some last minute updated translations, particularly of the definitions section of the Myanmar law into English.

**ACKNOWLEDGEMENTS:** We thank the European Union and governments of Australia, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Sweden, Switzerland, the United Kingdom, the United States of America for their kind contributions to improving the livelihoods and food security of rural people in Myanmar. We would also like to thank the Mitsubishi Corporation, as a private sector donor.

**DISCLAIMER:** This document is supported with financial assistance from Australia, Denmark, the European Union, France, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Sweden, Switzerland, the United Kingdom, the United States of America, and the Mitsubishi Corporation. The views expressed herein are not to be taken to reflect the official opinion of any of the LIFT donors.

## **About the Authors**

**Ruwani Jayewardene** has a Ph.D. in Anthropology, she worked as Principal Social Development Specialist, at the Asian Development Bank from 1998 to 2015. Her experience is in project preparation, implementation, monitoring, policy development and capacity development focusing on land acquisition and involuntary resettlement. She has extensive work experience in the Asia region and has led the team that prepared the National Involuntary Resettlement Policy, Sri Lanka with technical assistance from the Asian Development Bank as well as regional technical assistance projects in Cambodia, China, India, Kazakhstan and Azerbaijan. Most recently, she assisted the Government of Sri Lanka to prepare a law on Land Acquisition for National Priority Projects.

**Anandalal Nanayakkara** is an Attorney-at-Law engaged in practice and is also a Consultant to the Government of Sri Lanka and to development partner organisations including the Asian Development Bank, the World Bank and the FAO. He has wide experience in resettlement and land acquisition legislation and has served as Consultant to the Asian Development Bank and World Bank in relation to social and environmental safeguard. He has worked as an International Consultant - Legal Expert for the Asian Development Bank in reviewing diagnostic work relating to safeguards from Timor Leste, Papua New Guinea, Laos, Mongolia, Vietnam and Bangladesh, carried out diagnostic studies on involuntary resettlement for the countries in South Asia and worked as International Resettlement Expert and Team Leader in Timor Leste on Social Safeguards. He counts over twenty five years in professional experience. His expertise includes drafting law and policy, legal review and advice on implementation. He has also been engaged in preparing the draft legal framework for land acquisition for priority projects in Sri Lanka.

## Contents

ACRONYMS .....	4
INTRODUCTION .....	5
STRUCTURE AND SUBSTANCE .....	5
CUSTOMARY LANDS AND LAND USE POLICY .....	7
LAND, IMMOVABLE ASSETS AND VALUATION .....	8
EMINENT DOMAIN AND PROJECT DEVELOPMENT .....	9
INFORMATION SHARING, CONSULTATION AND PUBLIC DISCLOSURE .....	10
RESETTLEMENT AND REHABILITATION.....	11
INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS .....	12
PRIVATE SECTOR INVESTMENTS.....	13
GRIEVANCE MANAGEMENT .....	14
MONITORING AND EVALUATION .....	14
EMERGENCY ACQUISITION .....	14
TEMPORARY LAND ACQUISITION .....	15
PENALTIES .....	16
LEGAL ANALYSIS MATRIX.....	17
ANNEX 1: INDIAN LAND ACQUISITION ACT, 2013 – DEFINITIONS OF “PUBLIC PURPOSE” .....	26
ANNEX 2: LAND ACQUISITION AND RESETTLEMENT PROCESS .....	28

## **Acronyms**

CSO	Civil Society Organisation
EIA	Environmental Impact Assessment
IFC	International Finance Corporation
LAA	Land Acquisition Act
LAR	Land Acquisition and Resettlement
MDB	Multi-Lateral Development Banks
NLUP	National Land Use Policy
RAP	Resettlement Action Plan
SIA	Social Impact Assessment

## **Introduction**

Myanmar is seeking to update its colonial era 1894 Land Acquisition Act to reflect the country's development needs in the 21st century. This follows other former British colonial countries, many of which have recently updated or are updating land acquisition related legislation. The Government of India promulgated a new Bill (2013), on land acquisition that included resettlement and rehabilitation of projected affected persons. Meanwhile Sri Lanka and Pakistan still apply the colonial Land Acquisition Act, although both countries have undertaken various amendments in order to respond to different challenges posed by the modern era.

This technical review has been prepared by land resettlement safeguards experts to inform decision makers and other stakeholders in Myanmar regarding the Draft Land Acquisition Act 2017. This review draws on the lessons from other post British colonial countries in the South and East Asia Region, many of whom have had decades of experience since their first attempts to move away from out-dated colonial era legislation including the 1894 Act which was a common colonial law across former British colonies. This review has been conducted using the unofficial translation of the Land Acquisition Act as translated by the Land Core Group, supplemented with updated translations from Articles 1 to 23 undertaken by the Myanmar Centre for Responsible Business. Due to the unofficial nature of the translation, it should be noted that this review is by no means definitive, and it is possible that confused wording in the draft law is due to incorrect translation. That said, it is hoped that this review can provide some useful recommendations for the continuing development of the law. The observations contained in this report are derived from the authors' experiences in land acquisition policy and law formation in the region and elsewhere.

This review is conducted in two parts, firstly a narrative document undertaken by Ruwani Jayewardene that reviews the law along key themes and offers recommendations for strengthening the law. The second section undertaken by Anandalal Nanayakkara is a matrix document that analyses specific articles in the law, and makes comments or raises suggestions as to specific wording, or issues to consider further as part of Myanmar's efforts to modernise its legislative framework. Together it is hoped that this document can present both an analysis of the law and provide some input into the ongoing national discussions around the development of this law and the broader land governance framework.

## **Structure and Substance**

It is useful to layout the objectives of the law at the beginning of the document. Many countries do this in the form of a pre-amble, and in this law it is included in the objectives. The purpose of such a statement should be to inform all stakeholders as to the purpose and spirit of the document. While the current objectives do refer to receiving "just and equitable compensation" and the "rehabilitation of socio-economic livelihoods", the spirit of the document currently casts forced acquisition of lands and subsequent resettlement as 'fait accompli'. There is considerable room for improving on the current objectives to show a spirit of the law that is pro poor and does not view forced acquisition as a foregone conclusion. It was also felt that it would be useful for the current objectives to also highlight the overarching reasons for why land acquisition may be necessary in the context of infrastructure development etc. Additionally the objectives could refer to the need for transparency throughout the process, and seek outcomes that "avoid and minimise land acquisition and involun-

tary resettlement by exploring project design alternatives” as well as to ensure that peoples livelihoods are not just restored, but also “enhanced” particularly when resettled peoples are the poor and vulnerable.

In this context, the following pre-amble from the introduction of the 2013 Land Acquisition Bill passed in India offers an example of the type of wording that can be included in order to clearly indicate a pro-poor spirit in such a law.

*An Act to ensure, in consultation with institutions of local self-government... a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructure facilities and urbanisation with the least disturbance to the owners of the land and other affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons and their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto<sup>1</sup>*

It is noted that the current Myanmar law entrenches a highly centralised control over the resettlement process. Article 13 assigns the President (or a Union Minister assigned to act on his behalf) to sign and issue notifications for the requirement of land, which such notification ‘final and conclusive’. The authors would question the need for the president to sign off on every land acquisition which is both time consuming and overly bureaucratic. The appropriate Minister under the ministry should ideally be responsible for the implementation of the law. Highly centralised control such as the centralised and regional resettlement committees for a large country like Myanmar is likewise not recommended. When there are states with ethnic minority populations the strong presence of central agencies will not foster local level decision making, nor free and open public consultations. It is noted that the Ministry of Home Affairs, particularly the General Administration Department, is involved in land acquisition, yet the functions or value addition of involving these powerful agencies are not elaborated.

It is also observed that there are many committees, teams and Ministries written into the law without indicating their roles and responsibilities. Creating hierarchies of approval should be avoided. The more agencies involved in review and sign off, the more the whole process will likely be delayed. Similarly, the risk of involving multiple agencies in the acquisition process is that it may result in an absence of accountability and slow processing of paperwork. Likewise delays in providing land to contractors can result in heavy fines, increasing project costs.

Lastly, it was noted that the definitions section needs further thought and clarification. It is particularly recommended that more consideration be given to the definitions section in order to give clarity and provide consistency with other relevant legislation such as the 2015 EIA procedures.

---

<sup>1</sup> *The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013, (Act no 30 of 2013), Government of India, new Delhi.*

## **Recommendations**

- *The objectives should be improved to incorporate a pro-poor spirit of the document through referencing transparency, avoiding and minimising land acquisition and forced resettlement and “enhancing” resettled peoples livelihoods.*
- *It is best for the law to be under a relevant ministry such as a land related ministry.*
- *Decentralise to local administrative authorities that represent the people or consider a independent central authority with the power and resources to implement acquisition. Careful attention to checks and balances should be given if centralising land acquisition under a separate authority.*
- *Rules and regulations that accompany the law should be clear and precise to ensure implementing institutions and the public have a uniform understanding of the law. It may be necessary to allow States and Regions to prepare rules and regulations based on the national law.*
- *As per the legal analysis matrix, some definitions should be reviewed and wording checked for consistency throughout the document. It is recommended that the law move towards the utilisation of international standards in this regard.*

## **Customary Lands and Land Use Policy**

Land alienation from communities that are solely land and forest dependent poses a high risk of impoverishment and should be avoided. Broadly speaking, the law should address communal and customary rights to land and resources; recognising these are not only of economic importance but important for retaining community social and cultural cohesion and essential social support. It is necessary to refer explicitly to these rights in the law and recognise ethnic land tenure systems.

In this regard the author’s note that the Myanmar National Land Use Policy (NLUP) 2016 explicitly refers to the need to recognise and protect customary land rights, for example in Article 64;

*64. Customary land use tenure systems shall be recognised in the National Land Law in order to ensure awareness, compliance and application of traditional land use practices of ethnic nationalities, formal recognition of customary land use rights, protection of these rights and application of readily available impartial dispute resolution mechanisms.<sup>2</sup>*

Careful examination is required to ensure the Land Acquisition Law does not contradict or negate key provisions of the NLUP that protect land use rights, rights of ethnic groups, customary lands, communal and common property resource rights, water rights, the right to information etc. The Indian Land Acquisition Act (2013) offers some insight into potential safeguards that could be put into the Myanmar law regarding customary tenure rights, in particular article 41 of the Indian Land Acquisition Act (2013) refers exclusively to the ethnic “scheduled” tribes of India and gives them special protection under the Land Acquisition Act, most notably stating in sub-article 41.(1) and (2)

---

<sup>2</sup> National Land Use Policy of Myanmar, 2016. Art 64



which state that “As far as possible, no acquisition shall be made in Scheduled Areas” and that where such acquisition takes place it shall only be done as a “demonstrable last resort.”

### **Recommendations**

- *There is virtually no reference to local systems of tenure and land management. The law should take these important aspects into account.*
- *Explicitly refer to compliance with existing law and policy that provide safeguards to people or otherwise incorporate those provisions within the law.*
- *Consider excluding alienation of land that is under customary use or used by ethnic minority groups.*
- *The Indian LAA (2013) may be a useful reference in terms of developing safeguards for Indigenous, Tribal, or ethnic minority and forest dependent peoples. Additionally, provisions related to protections around customary tenure, women and vulnerable groups could also be drawn from international practice and soft law such as the UN Declaration on the Rights of Indigenous Peoples and IFC Performance Standards, particularly PS5 and PS7 on Land Acquisition and Involuntary Resettlement and Indigenous People respectively.<sup>3</sup>*

### **Land, immovable Assets and Valuation**

Currently there is no direct reference to land compensation separate from compensation for other assets. Myanmar is rich in resources, however the law does not touch on large scale extractive industry, the potential impacts and the protection of rights of the communities from whom, vast quantities of land will be required.

Valuation is a critical aspect of compensation for all lost assets. Normally, valuation is undertaken by expert valuers and based on actual costs of land sales through a registry. As described by the World Bank (2017), this valuation process is currently not in place in Myanmar. Many of the recommendations of the draft World Bank report are sensible and if implemented would be helpful in determining appropriate costs of compensation payments in the case of forced acquisition.<sup>4</sup>

Opportunities for corruption are high if mechanisms for transparency are not established. This applies both to assessments and payments. In India price guidelines are published on the internet to facilitate transparency around land valuation. The public may obtain market prices by district, street and type of residence with different categories listed by the Government valuer. Rather than ad-hoc measures, it is advisable to have a Government approved policy for valuation including, methodology and procedure.

Acquisition of land and immovable assets should include a range of losses and impacts whether compensated in cash or kind or a combination of both. Land compensation in cash or replacement

---

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples, 2007, and IFC performance standards at [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps5](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5) - links to Burmese pdf available through this page

<sup>4</sup> See World Bank (2017), *Towards a Sustainable Land Administration and Management System in Myanmar: Land Sector Needs Assessment Thematic Policy Notes – Policy Note 5 Property Valuation and Taxation*.

land based on use and type, trees, timber, economic trees, crops, other physical assets, residential, businesses, wells, loss of business, loss of income during relocation, transport costs, re-establishing livelihoods, graves, religious places, common property, water resources, etc. Depreciation of assets should not be considered when assessing values under forced eviction. Valuation guidelines and norms should accompany the law and be publicly disclosed.

### **Recommendations**

- ***Review the impact of the law on communities and their communal land rights, in order to avoid high risks to indigenous people and people living in resource rich areas.***
- ***Consideration should be given to benefit sharing options with local communities in the event of land acquired for private investment in large extractive projects.***
- ***Full replacement cost<sup>5</sup> should be the benchmark. Replacement cost allows people to replace assets of equal quantity and quality within a given time frame and also covers all administrative costs that relate to land acquisition and resettlement (LAR). This is the principle applied by multi-lateral development banks (MDBs). In Sri Lanka for example, since replacement cost is not referred to in the 1950 LAA, a separate gazette was issued to cover additional costs related to resettlement. Further, for the first expressway project constructed in Sri Lanka, a separate Land Acquisition and Resettlement Committee, was established and given special powers to negotiate compensation over and above the price assessed by the Government valuer.***
- ***Rights to enter the land for investigation should be included with payment for damages.***
- ***Lack of transparency in compensation procedures and methods is a major stumbling block for project development and a serious risk to people when land is expropriated by the state.***

### **Eminent Domain and Project Development**

The Webster Dictionary describes Eminent Domain “the right of a government to take private property for public use by virtue of the superior dominion of the sovereign power over all lands within its jurisdiction”. Most countries have eminent domain laws which allow the state to acquire private property specifically for public use and in some cases for private investment as well as to support Public Private Partnership projects (PPP). However, typically many countries maintain a clear public purpose definitions when acquiring land under eminent domain. It was noted that the current definition around public purpose is too loose and broad, in essence allows for a “catch all” where projects by private investors may be interpreted as “public benefit” when in fact, they serve no public

---

<sup>5</sup> The rate of compensation for acquired housing, land and other assets will be calculated at full replacement costs. The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Where market conditions are absent or in a formative stage, the borrower/client will consult with the displaced persons and host populations to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping patterns and crop production, availability of land in the project area and region, and other related information. The borrower/client will also collect baseline data on housing, house types, and construction materials. Qualified and experienced experts will undertake the valuation of acquired assets. In applying this method of valuation, depreciation of structures and assets should not be taken into account. (Safeguard Policy Statement, Asian Development Bank, 2009).

purpose. The Indian Land Acquisition bill (Section 2 (1-2)) which is included in Annex 1 of this report contains a detailed list of projects that constitute ‘public purpose’ and could be a useful reference in developing a list of public purpose projects for the utilisation of eminent domain.

Accuracy of identifying lost assets and proper documentation including, the principal requirement to avoid or minimise land acquisition is influenced by project design. However, the draft law is currently not linked to the technical design and approval processes related to the project cycle. Reference should therefore be made to sequencing of tasks, and disclosure of information to the public based on technical design both at the feasibility stage and final design stage. There is no provision for people to raise “objections” to a project. Only once all the necessary information and results of consultations and responses are considered should the relevant information be submitted for approval. Project finance disclosure should provide costs related to land acquisition and resettlement including, source of financing whether it is the responsibility of the agency or the finance ministry. Civil works and possession of land should follow after all such tasks are completed. Early information gathering on land acquisition and resettlement offers greater safeguards rather than downstream when civil works take precedence and people face undue hardship when there is a rush to complete unfinished LAR. By way of example, in order to comply with IFC’s policies on environmental assessment of projects and disclosure of information, all sponsors of projects resulting in involuntary resettlement are required to prepare and publicly disclose a Resettlement Action Plan (RAP). The RAP must be prepared through a process of public consultation with all interested and affected parties. A potential process for resettlement is provided in Annex 2 of this document.

### **Recommendations**

- *The definition of public purpose should be reconsidered, ideally listing the range of public purpose projects eligible for land acquisition and involve parliament in the approval of large projects say over \$20 million or any other relevant threshold.*
- *Include a requirement to avoid or minimise land acquisition and resettlement by conducting options assessments and technical design.*
- *The law should recognise the link between the technical design of a project and information gathering on social impacts, inventory of losses, valuation and payment.*

### **Information Sharing, Consultation and Public Disclosure**

In keeping with the above, information sharing and public disclosure need to be incorporated into the law. Accurate and timely information sharing is integral to meaningful consultation. Additionally there is no mention of the important role that CSO participation can play in supporting the consultation process including helping communities to understand and comment on resettlement action plans. Information sharing and disclosure is a process and should be reflected as such.

### **Recommendations**

- *Public disclosure of project design and costs is essential when public funds and private land is being acquired by the state.*
- *Specific mention should be made to recognise and protect CSO participation in the process, including verifying information gathered on the inventory of losses, directly involved in consultations and public disclosure by reviewing documents, and also explaining to af-*

*affected people who may not be literate, the details of the proposed law and relevant resettlement programs.*

- *Disclosure requirements at different stages of the project cycle and land acquisition and resettlement process are required. Information with relevant maps and names of persons to contact should be disclosed at different periods during project preparation and implementation.*
- *A time-frame for disclosure should be written into the law.*
- *To ensure the law is widely disclosed and understood, include a legal literacy requirement for the public and identify the agency responsible for public information for matters related to the law.*

### **Resettlement and Rehabilitation**

There is very little substance in the law on resettlement and rehabilitation. For example, how are livelihoods be supported without a comprehensive social impact assessment? What are the benchmarks for re-establishing livelihoods? Informal dwellers are not considered in the definition of “persons with an interest in the land”, in the urban context particularly, support to informal dwellers is vital as impacts are severe, for which protection should be provided through the law. Similarly, severance impacts (resulting from linear projects), easement rights (the right to pass through land) are also not considered.

Reference to a Social Impact Assessment (SIA) for assessing land acquisition and resettlement is essential. The law does not refer to an SIA explicitly for assessing the scale and severity of impacts on affected people. Depending on livelihoods, social and economic status people are affected differently by LAR. For example, farmers, farm workers, tenants and shopkeepers, vulnerable households all will be affected by LAR but the impact on each group varies. The SIA is an essential tool for identifying the different groups and assessing the impact on each and the necessary compensatory and support measures required. It is noted that the current EIA procedures provide for the provision of an SIA as part of the EIA process. However, an SIA conducted under the EIA should not be confused with the SIA for LAR. **Amalgamating SIA for the EIA and LAR risks reducing quality of both and failing to achieve the objective for understanding impacts in two very different contexts.**

The IFC Handbook for Preparing a Resettlement Action Plan has clear guidelines on what to include and how to identify the project impacts and affected populations and could be used as a helpful reference to consider appropriate ways in which resettlement and rehabilitation could be considered in the law.

The first task in planning resettlement is to identify a project’s adverse impacts and the populations that will be affected. As noted above, this usually requires participation of qualified experts who have appropriate training and experience. Resettlement planning involves more than simple cadastral surveys or inventories of affected assets. The ultimate goal of a RAP is to enable those displaced by a project to improve their standard of living—a goal that requires an examination of social, environmental, and economic conditions beyond simple physical inventories. [...]

The RAP must identify all people affected by the project and all adverse impacts on their livelihoods associated with the project's land acquisition. Typical effects include breakup of communities and social support networks; loss of dwellings, farm buildings, and other structures (wells, boreholes, irrigation works, and fencing), agricultural land, trees, and standing crops; impeded or lost access to community resources such as water sources, pasture, forest and woodland, medicinal plants, game animals, or fisheries; loss of business; loss of access to public infrastructure or services; and reduced income resulting from these losses. [...]

Host communities may be affected adversely by new settlement and should therefore be identified as a category of persons affected by the project.<sup>6</sup>

### **Recommendations**

- *Resettlement and rehabilitation should be guided by the preparation of a resettlement plan with a time bound implementation program, defined budget etc. which is publicly disclosed and developed with the support of the affected communities and CSOs. Local community networks and leaders should be involved in the process to ensure social and cultural relevance of the proposed programs. The resettlement plan serves as a tool for implementers and establishes basic uniform standards, for example an entitlement matrix which details entitlements to affected people based on the type, scale and severity and impact of the losses.*
- *The law should call for avoiding acquisition that results in loss of livelihoods and risks impoverishment of vulnerable people. Landlessness and the loss of common property resources resulting from acquisition should be avoided if possible.*
- *The law should reference SIA for LAR and explicitly identify that it is not the same as SIA required under EIA procedures.*
- *Resettlement plans for large projects should be reviewed and revised by independent technical committees.*

### **Institutional and Implementation Arrangements**

Institutional and implementation arrangements should be better elaborated to avoid delays and to support local agencies that may be already cash strapped and lacking in resources and capacity. In particular the law assumes adequate and up to date systems related to record keeping, survey methods, procedures and methodology; however in Myanmar such systems are not necessarily in place. As mentioned previously there is also no mention of how communally owned lands, pastures, forests and water rights customary or otherwise are to be addressed.

Except for compensation payment, the law has no milestones or time frame for completing different tasks in land acquisition, internal approvals and the project cycle. In Pakistan, due to the absence of time bound procedures, the delay between assessing compensation and paying out the compensation may take years thereby severely limiting peoples ability to replace lost assets. The practical aspects of operationalising the law requires more careful thought. In Sri Lanka, it takes an average of five

---

<sup>6</sup> International Finance Corporation (2002). *Handbook for Preparing a Resettlement Action Plan*. p.12

years (including 55 procedural steps), multiple agency involvement to complete land acquisition and this does not include payment to the affected persons.

While the local implementing agency is expected to indicate costs of administering LAR, it is important to ensure funds are available not only for administering LAR but also for payment of compensation and financing resettlement.

### **Recommendations**

- *To avoid delays, responsible bodies such as the implementation teams should be defined with the relevant agency representatives, skills and membership identified.*
- *It is best to ensure compensation and other cash entitlements are deposited with the agency responsible for payment or with designated banks to make electronic payments which will minimise unnecessary bureaucracy and minimise potential for corruption. The need for timely deposit of funds with the responsible bank/payment agency should be reflected in the law. If an agency does not deposit the funds, it should not be allowed to proceed with the acquisition.*
- *Avoid creating excessive bureaucratic steps and streamline procedures when writing rules and regulations.*

### **Private Sector Investments**

Joint Venture projects are not defined in the law. If such investments are open to eminent domain, the roles and responsibilities of the different parties should be clearly stated. Similarly, article 7(c) does not allow for the private sector entity to apply for access to eminent domain if the project is a Joint Venture between the state and the private investor? It is not clear what public benefit is envisaged in this case?

Public investment for ‘public purpose’, should be distinguished from, private investment and public private partnership projects. The law is too vague on private investment and Joint Ventures and has no discussion on benefit sharing in such cases. Such vagueness is highly risky to the public whose lands are subject to acquisition.

### **Recommendations**

- *Review carefully the provisions for Joint Ventures and private investors’ access to land acquisition.*
- *Consider application only for public private partnership projects with full disclosure and information sharing on the PPP project.*
- *Consider benefit sharing options in the event of private investment projects. Review Section 2,(1-2), of the India Land Acquisition Bill (See Annex 1) which has several limiting conditions for the use of eminent domain in joint investment projects.*
- *Large scale sensitive projects, particularly, those engaging extractive industries should be reviewed by independent technical committees which include CSOs and are subject to parliamentary approval.*

## **Grievance Management**

The law should include a section on grievance handling. The Asian Development Bank Safeguard Policy Statement (2009) use the term *grievance* and *grievance redress mechanism* to indicate a mechanism to receive and facilitate resolution of affected persons' concerns. Experience indicates grievance is poorly managed if the institutional arrangements are not well defined and supported. Independent review or appeal boards at regional level should be established.

While the courts play an important role in grievance mechanisms, all efforts to resolve grievance at the local and regional level should be considered. CSOs have an important role to play here as well and such a role should be acknowledged in the law. Finally it is noted that under the current draft the President is given the authority under article 32, to override the decision of a court not to confiscate land. If courts are to function as independent adjudicator, this should be reconsidered.

## **Recommendations**

- *Establish clear grievance mechanisms in the law that are inclusive and transparent.*
- *Consider establishing independence grievance boards with high level officials and legal representatives.*
- *Review the power of the President to overrule the decision of a court not to confiscate land.*

## **Monitoring and Evaluation**

Monitoring and evaluation in real time is critical to track progress and take corrective action. Evaluating the final output is necessary to assess if objectives are met and evaluate outcomes. While specifically focusing on the project's land acquisition and resettlement, monitoring and evaluation data and analysis provide important lessons for improving law and policy over time. It is noted however, that there is currently no reference to independent monitoring and evaluation, disclosure and reporting arrangements under the land acquisition process.

## **Recommendations**

- *Include the requirement to prepare six monthly independent monitoring and evaluation reports. Consider submitting annual reports for parliamentary review specifically for large scale, high risk projects.*
- *All monitoring reports should be publicly disclosed.*

## **Emergency Acquisition**

Articles 49-52 specifically deal with Emergency land acquisition. This is a colonial relic that is often abused in other countries in South Asia. In fact many countries in ASEAN do not have provisions for emergency acquisition. As such the reviewer questions whether it is necessary for the new Myanmar law to contain out dated provisions such as this. Sri Lanka has abused the emergency clause to the extent that people are left without compensation, and the safeguards provided in the law such as the *right to objection* are circumvented. In Sri Lanka, typically the emergency clause of the land acquisition act is used to avoid delays and conflicts with the need to provide opportunities for the affected persons to raise objections, thus perverting the law and severely risking livelihoods

of the affected persons and communities losing land to the project. In Sri Lanka, inappropriate use of the emergency clause has resulted in stay orders issued by the courts delaying projects and increasing costs to land owners. Care needs to be taken that the use of emergency acquisition is not applied to expedite acquisition and avoid implementing the law in its entirety.

Powers vested with the Union Government and Pyidaungsu Hluttaw for emergency acquisition (49e), could be subject to abuse. There should be more transparency in decision making. Every effort must be made to “limit” the use of this clause and abuse of power. The specific conditions / triggers for emergency acquisition are not currently clear and should be improved. While there is a provision in section (52, 9 b), for providing compensation even under emergency circumstances, no specifics are given.

### **Recommendations**

- *Provisions for Emergency Acquisition should be deleted from the law.*
- *If it is determined that the provision for emergency acquisition is essential, ensure the law is written considering its implementation, the availability of systems and records and the time taken to implement the requirements.*
- *If compensation is to be provided even in the case of emergency acquisition then, the law should specify the assets for which compensation is to be paid. For example, loss of livelihoods until land compensation is paid, housing and other immovable assets if relocation is required including, the provision of relocation sites.*

### **Temporary Land Acquisition**

In the case of private sector investments where temporary land acquisition is undertaken by the private sector, any such temporary acquisition should be supervised by the local authority who should ensure that the private sector leases land at local market prices with formal documentation drawn up and recorded with the relevant local government agency.

Typically, sites for contractor camps etc. are negotiated with land owners, however, to avoid the risk of asymmetries of power, absence of transparent information about market prices, the rules and regulations accompanying the law should provide relevant guidance or establish mechanisms for land losers to obtain expert support during negotiations.

Chapter 10 (61), there should be a defined time frame within which the land should be utilised. It is common for land to be acquired, not used at all or not used for decades resulting in economic loss to all stakeholders.

### **Recommendations**

- *For temporary land acquisition, the lease agreements should be reviewed annually to ensure lease prices are current. Leased lands should be returned to original land owners, restored to their original condition or land owners compensated for land that is not restored. Lease terms should specify clearly the conditions for returning the land.*
- *Wording should be inserted into the document regarding the need for leases paid at market prices for land acquired temporarily and documentation recorded with relevant local government.*



- *Temporary, should be defined so that land cannot be held for an extended period of time.*

## **Penalties**

The overall implication of chapter 11, contradicts the spirit of consultation, participation and right to object to land acquisition.

## **Recommendations**

- *There should be a penalty for agencies abusing the emergency clause.*
- *Paragraph 62 and 63, the amount of the fine should not be stipulated, the value will reduce over the years. Instead, “not less than...” may be more useful and will allow for changes over time, or rather these payments should be addressed in the implementing rules.*

## Legal Analysis Matrix

	Land Acquisition Law 2017 Draft	Legal Analysis and Recommendation
	<b>Chapter (1) Name, Enforcement and Definition</b>	
1.	(a) This law shall be called the Land Acquisition Law (2017).	The Act uses the terms acquisition, confiscation (confiscated) and seize (seized) without indicating clearly their distinction. They presumably apply to the same circumstances. Recommend that each of these terms be defined. If they refer to the same instance then use consistent terminology throughout.
	The situation of non-title holders is unclear in the Law. This could include persons living on the land who do not enjoy title or any other right recognised by law as well as those who have title but may not have documents to establish same. It is unclear whether such person would be entitled to some form of assistance or resettlement/rehabilitation measures.	
2.	<p>The following terms expressed in this law shall have the meanings given hereunder:</p> <p>(b) <b>Person with an Interest in the Land</b> includes the following persons:            (1) land owners and persons who have the right to claim compensation for land acquired under this Law;            (2) persons who work on the acquired land as a tenant farmer, under a mutual benefit agreement or through a lease.</p> <p>(c) <b>Affected Household</b> includes the following persons:            (1) A household whose land or other immovable property are acquired;            (2) one or more members of a Household who, although they do not own the land, worked continually as farmworkers or pieceworkers on the affected area prior to the acquisition of the land, and whose livelihood has been affected due to the acquisition of the land;            (3) persons whose livelihood has been affected due to land acquisition ;            (4) a household who although they do not have legal ownership were genuinely residing and working on the acquired land for a certain period before it was acquired, and has invested in and depended on the acquired land for their livelihood</p> <p>(d) <b>Land-owner</b> means the following persons: `             (2) person who has been issued owner grant or lease grant in respect of that land according to any existing law;</p>	<p>These definitions are very important and need further careful consideration and amendment. Overall the current definitions are found to be somewhat complicated, and there is some overlap between the two terms, <b>persons with an interest in the land</b> and <b>affected households</b>. It is suggested that the law consider international standards and be harmonised with other relevant laws such as the EIA procedures to avoid confusion in implementation.</p> <p>Section 2 (d) (2) defines Land-owner as including a person who is issued 'lease grant' in respect of that land according to any existing law. Presumably a holder of a 'lease' or 'lease grant' is a 'lessee' and not an 'owner'. It is unclear whether the recognition of a person issued with a 'lease grant' as a 'Land-owner" is consistent with the relevant law in the context of Myanmar.</p>

<p>(d) <b>Land-owner</b> means the following persons: `</p> <p>(4) a person who is recognised as the owner according to local traditions, though there are no legal documents.</p>	<p>Although this article seems to attempt to recognise customary tenure, it is not clear what is meant here by owner and whether only permanent farmland and housing is considered here or whether this also incorporates broader uses of land that may be owned by the community at large through communal tenure arrangements where no specific individual is recognised as an owner.</p>
<p>(e) <b>Compensation</b> means any land or money or right or other material substituted or exchanged for acquisition of any land to the Person with an Interest.</p>	<p>The distinction between ‘compensation’ and ‘damages and relocation expenses’ needs to be clarified. Compensation is defined in the context of ‘persons interested’ while damages are defined in the context of ‘affected households’</p>
<p>(f) <b>Damages</b> means the money, rights or other goods provided to an Affected Household to compensate for the negative impacts they have suffered due to land acquisition.</p>	
<p>(h) <b>Resettlement</b> means arrangements to provide residential buildings and infrastructure to persons relocated from acquired land which provide at least an appropriate minimum standard of living</p>	<p>This clause defines the term ‘resettlement’ and then seeks to define a standard. It is recommended to define ‘Resettlement’ here, but to establish the standard of implementation separately in the body of the law.</p> <p>“Displacement” could mean physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use.”</p>
<p>(i) <b>Restoration of socio-economic circumstances</b> means arrangements to provide those whose welfare has been negatively affected by land acquisition with a minimum standard of living, job opportunities, activities to support livelihood, transitional expenses and social support</p>	<p>As above, the clause defines the term rehabilitation of “socio-economic life” and then seeks to establish standards thereto. Recommend to define the term in the definition section and then establish the standard of the implementation separately.</p>
<p>(l) <b>Resettlement and Livelihood Restoration Central Committee</b> means a body formed and assigned duty by the President of the Union, by notification, to supervise the processes of resettlement, socio-economic life rehabilitation of the persons transferred from the confiscated land and persons affected for land acquisition.</p> <p>(m) <b>State or Region Resettlement and Livelihood Restoration Committee</b> means a body formed by a Notification of the Resettlement and Livelihood Restoration Central Committee and assigned the responsibility to carry out programmes for the Resettlement and Restoration of Livelihood of those affected by land acquisition.</p>	<p>The draft Law refers to the Resettlement and Socio-economic Rehabilitation Central Committee and the State or Region Resettlement and Socio-economic Rehabilitation Committee. However, other than in the definition section, the constitution of these committees, their roles and responsibilities, their interventions, their reporting requirements etc., do not feature elsewhere in the Law.</p>
<p>(u) <b>Public Purpose</b> means purposes relating to the security of the State, national economic development, and public social, education, health and economic development.</p>	<p>The current definition around public purpose is too loose and broad in essence allowing for a “catch all” where projects by private investors may be interpreted as “public benefit” when in fact, they serve no public purpose. Therefore, the definition of public purpose should be tightened, ideally listing the range of public purpose projects eligible for land acquisition and involve parliament in the approval of large projects say over \$20 million or any other relevant threshold. See Annex 1.</p>

<b>Chapter (2) Objectives</b>	
<p>The objectives of this Law are as follows:</p> <p>(a) To provide a legal basis for the acquisition of land, prevention of illegal land acquisition and safeguarding the welfare of those who have had their land acquired;</p> <p>(b) To ensure that Affected Households and local communities who will be affected by the acquisition of land are transparently provided with information to enable them to freely negotiate and make decisions ;</p> <p>(c) To ensure that Affected Households receive appropriate and equitable Compensation and Damages</p> <p>(d) to provide for Resettlement as a consequence of losses and damages which have resulted from loss of housing and relocation due to the acquisition of land</p> <p>(e) to ensure the Restoration of Livelihoods of Affected Households</p> <p>(f) to prevent adverse environment and public socio-economic impacts caused by acquisition and use of land.</p>	<p>The objectives of the Law could include the following :</p> <ul style="list-style-type: none"> <li>• Avoiding resettlement.</li> <li>• When avoidance is not possible, minimising displacement by exploring alternative project designs.</li> <li>• Anticipating and avoiding, or where avoidance is not possible, minimizing adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.</li> <li>• Improving, or restoring, the livelihoods and standards of living of displaced persons.</li> <li>• Improving living conditions among displaced persons through the provision of adequate housing with security of tenure at resettlement sites.</li> </ul>

<b>Chapter (3) Matters Relating to the Land Acquisition Law</b>	
<p>8. The proposal for land acquisition for public purpose shall attach the following necessary documents:</p> <p>(f) an assessment of the socio-economic impacts of the land acquisition on <b>Persons with an Interest</b>, and <b>Affected Households</b>;</p>	<p>There should be a requirement to submit a draft entitlement matrix at this stage (defined in section 2), the purpose of which would be to indicate the type of loss [land, house, livelihood, business etc.] and also the person or unit that would be entitled as per the applicable law.</p>
<p>The proposal for land acquisition for public purpose shall attach the following necessary documents:</p> <p>(g) programme necessary for the Resettlement and Livelihood Restoration of <b>Persons with an Interest in the Land</b>;</p>	<p>Section 8 (f) requires the submission of a feasibility study on the impacts to socio-economic life relating to persons with an interest in the land and affected households whereas section 8 (g) only seems to refer to the resettlement and rehabilitation measures in respect of the persons with an interest in the land and not the damages in respect of the affected households. Both aspects should be clearly identified in relevant places throughout the Law.</p>
<p>The proposal for land acquisition for public purpose shall attach the following necessary documents:</p> <p>(j) administrative approval.</p>	<p>It is unclear what is meant by “administrative approval”. Further clarity is needed.</p>

**Chapter (5)**  
**Notification for Requirement of Land and Preliminary Inspection**

14.	<p>(c) The Land Acquisition Implementation Body established under section 12 shall be comprised of relevant departments, organizations, professional experts and other suitable persons, and duties allocated accordingly.</p> <p>(d) The tasking of the Land Acquisition Implementation Body shall be conducted transparently and with the involvement of Affected Households in decisions.</p>	<p>Section 14 (c) refers to the formation of the Land Acquisition Implementation Board and section 15 refers to the Land Acquisition Implementation Team etc. it may be necessary to specify the disciplines that should be reflected within each of these entities including those with expertise in land and asset valuation, sociology, law etc.</p> <p>Instead of appointing such bodies as and when required, having at least a semi-permanent structure may go a long way towards developing institutional capacity in relation to land acquisition and a uniform approach.</p> <p>In several places, the Draft emphasises the need to act in a transparent manner (eg 14 (d)) it requires the Land Acquisition Implementation Board, to carry out all processes transparently and with participation of the aggrieved families in the decision-making process. These are significant requirements as recognised in the Law. However, having in place the <u>actual measures</u> by which such transparency (and perhaps accountability) could be achieved would facilitate ensuring transparency and also enable the allocation of funds required in order to obtain same. These could include providing timely access to information, decisions relating to compensation etc., being made publicly so that everyone is aware of the process of valuation and the actual amounts that were determined for assets etc.</p>
15.	<p>Before the commencement of the work, the Land Acquisition Implementation Body shall make an advance claim for estimated costs of administration and the necessary survey work, and shall make an advance calculation of the cost of any payments for Damages and seek this from the Project Proponent. The work of the Body shall only commence after it receives the above-mentioned expenses.</p>	<p>Section 15 only refers to the 'cost of any payments for damages'. The Land Acquisition Implementation Body needs to ensure that resources to pay both 'compensation' and 'damages' is available for payment based on advance calculations before commencing work.</p> <p>Further, some financial provision would have to be made by the Government to the Land Acquisition Implementation Team in order to carry out the advance calculation which is to be verified later through field survey etc. Such financial provision could be recovered from the beneficiary of the acquisition.</p>
16.	<p>(a) The Notification of Intention to Acquire Land shall be published in the Myanmar Gazette, daily newspapers, local newsletters ( if any), and additionally shall be made public by affixing it on the notice board of the State or Region Government or Nay Pyi Taw Council Office. Moreover, the copies of Notification shall be placed on public noticeboards in the following places where the land is situated, for information of the general public, and if necessary, the Notification shall also be published in the local language:</p> <p>(i) District Administrator's Office, Township Administrator's Office, Ward or Village-tract Administrator's Office of the area where the land is situated;</p>	<p>The calling for public comments should be preceded by a process where information is made available to the affected persons such as a draft Resettlement Action Plan (RAP). Information in the draft RAP should include information related to rehabilitation and resettlement measures including eligibility criteria, land and housing replacement plans, compensation, livelihood restoration and vulnerable peoples plans. Only after such information has been disseminated will public consultation be meaningful. It is recommended that much more emphasis be placed in the law on meaningful engagement and provision for '<i>negotiation</i>' with PAP e.g., on</p>

	(ii) Township Court, Township Development Committee's Office, markets owned by the Development Committee, Township Information and Public Relations Department Office of the area where the land is situated; (iii) Notice boards erected in convenient places near the land intended for acquisition for the purposes of informing the general public.	compensation, other assistance measures, housing etc. to enable flexibility and allow for particular circumstances of project affected peoples. There is currently no mention of the need for consultation at every step of the planning and implementation process, including special measures to engage vulnerable people.
	(b) The information shall also be publicised through television and broadcast media.	It is recommended that there also be a requirement to publish on the internet in a searchable format. Although Gazette is available online, that's insufficient and impossible to search.
17.	As soon as the Notification of Intention to Acquire Land is issued, the Land Acquisition Implementation Body will form survey sub-teams as necessary, comprising its members and other suitable persons from departments and other external experts, with the advance approval of the State or Region Government or Nay Pyi Taw Council to address the following: (a) survey of the land to be acquired and collection of public comments on the proposal for land acquisition; (b) cross-checking the information provided by the Proponent concerning the adverse impacts on livelihoods of the Affected Households at the place of land to be acquired, as well as potential environmental impacts; (c) negotiation and obtaining agreement on the amounts for Resettlement and Restoration of Livelihoods to be paid by the Proponent, based on the expert opinion and the requests of the Affected Households.	Section 17 indicates that the Land Acquisition Implementation Team may, soon after the public notification for land requirement is issued, form the assessment branch body for matters inclusive of field inspection of the land intended to be confiscated and for the collection of public comments on the proposal and counter-checking submissions of the project proponent relating to the damages of socio-economic life of the affected households at the place of land intended to be confiscated, potential environmental impacts, with the field realities etc. Thus, it would appear that even though there is a scrutinising of such information at an earlier stage i.e. by the State or Region Government or Secretary of Nay Pyi Taw Council as provided for in section 10 of the Draft, the actual counter checking taking into account the field realities take place only in terms of section 17. It is noted however, that by the time the collection of public comments and field checking occurs in terms of the section 17, the proposal has already gone through a lengthy approval process culminating in section 13 of the draft whereby the Union Government is satisfied and agrees with the assessment report of the State or Region Government or Nay Pyi Taw Council on the proposal for land acquisition and the public notification is issued and signed by the President of the Union or any Union Minister assigned duty by the President of the Union. The decision of the President of the Union relating to refusal or allowance to continue on the proposal for land acquisition, is final and conclusive as per section 13. Therefore, the effect of the collection of public comment etc., set out in section 17 is unclear. In this regard it also appears that in terms of section 32, the Union Government acceptance of a decision of Court not to confiscate the land [as per section 31] can be overruled.
19.	Each field survey shall carry out the following steps : (b) field survey and census of the baseline data of Affected Persons and impacts;	Section 19 (b) makes reference to 'Affected Persons' rather than 'Affected Households' as per Section 2(b)&(c). Similarly Section 21 (c) mandates seeking a decision of Court in the event that the 'Affected Person' is dissatisfied with the compensation. Terminology should be carefully reviewed to avoid any possible confusion or conflict.
21.	The relevant sub-team undertaking the field survey of the land intended for acquisition, and collection of public comments on the purpose and situation of the land acquisition, has the obligation to:	

	(c) record the impacts on Persons with an Interest in the land; calculate compensation; pay compensation after receiving approval of the State/Region Government; and where the Affected Person is dissatisfied with the compensation, seek a Court ruling;	
22.	<p>The relevant sub-team assessing whether or not the proposals for Resettlement by the Proponent accurately reflect the real situation of the Affected Households, shall:</p> <p>(a) have the following duties:</p> <p>(i) whether or not the Relocation site is suitable;</p> <p>(ii) the situation concerning reconstruction of religious buildings, and public buildings such as schools, clinics, markets, and offices etc;</p> <p>(iii) Plans for basic infrastructure such as roads, electricity, drinking water and sanitation, cemeteries etc;</p> <p>(iv) whether or not the buildings to be reconstructed are at least as good as the suitable living standard;</p> <p>(v) plans for implementation of resettlement</p> <p>(b) by the following methods:</p> <p>(i) on-the-ground inspection of the issues contained in sub-section (a)</p> <p>(ii) ensuring that assessment involves representatives from the Proponent organization/department, as well as Project Affected Persons, departmental experts, and other necessary persons and organizations;</p> <p>(c) in inspecting so, the field inspection body may exercise the powers such as calling for and copying of necessary documents, counter-checking, summoning and examination of the persons considered relevant etc..</p>	<p>In the event of persons being moved to another location, measures may be required to integrate them with the existing or host communities at the relocation site. As such certain project benefits could also be extended to the host population.</p> <p>In the event that persons are being relocated, and/or land is being exchanged as indicated in the definition of ‘compensation’, it is unclear whether they will receive secure title/tenure at the new location. It is strongly recommended that it is made clear in the law that resettled peoples must have secure title/tenure in their relocation sites.</p> <p>The principles for compensation etc., should be clearly spelt out. They should include that in the event of exchange of land in lieu of compensation, the owners shall be provided secure title to the land given in exchange.</p> <p>22.a(i) directs the body to determine the suitability of resettlement locations. It is recommended that various options for resettlement are considered so that Persons being resettled are not just told where they will go, but are able to consider various alternatives and choose the most appropriate for their situation.</p>
28.	The Region or State Government shall, according to the assessment, submission of recommendation, of Land Acquisition Implementation Team, issue its decision and recommendation to enable to know by the relevant affected households, before submitting it to the Union Government. It shall also mention that if a person dissatisfies with the decision of the Region or State Government or Nay Pyi Taw Council, he may file to a court within 30 days from the date of such issue.	<p>It is unclear why this doesn’t also apply to the persons with an interest in the land.</p> <p>Considering the importance of the time limit for the possibility to go to court, it may be prudent to indicate the manner in which such decision is to be issued so that the date from which time starts to run is clear. Therefore the law could publish such decision in a formal manner accessible to the affected persons. Considering the importance of this provision sufficient time should be given to the person to have recourse to court and an extension of the time to 60 to 90 days could be considered.</p>
32.	The proposer for land acquisition may have the right to submit petition to the President of the Union to pass an order for revising the decisions contained in section 31. The President of the Union may pass an order which he considers appropriate on such petition.	It appears that in terms of section 32, the Union Government acceptance of a decision of Court not to confiscate the land (as per section 31) can be overruled. . It is unclear whether this was the intention of the law.

<b>Chapter (6)</b>		
<b>Declaration for Land Acquisition and Taking in Possession of Land</b>		
37.	<p>The following shall be included in the field inspection work plan:</p> <p>(b) In measurement of the land during the work of field trip with the persons interested, or their legal agent, the following points shall be examined and recorded about the land.</p>	<p>The Law should clearly establish the guidelines for valuation for the purpose of compensation according to full replacement costs.</p> <p>In full replacement cost the basis is the cost of replacing the lost assets and income. In the event of land, it could mean the cost of buying replacement land near to the acquired land that is equally productive. It could include transitional costs such as the cost of registration and payment of stamp duties and taxes. In the event of structures, the current market value of buildings without taking into account depreciation. For crops replacement cost, it is based on economic production etc. The Asian Development Bank Safeguard Policy Statement mandates full replacement value.</p>
	(2) Location of land, area, land classification, class level and the market price of the day of notification in need of land under section (14);	It is important to consider the concept of adequate/appropriate classification of land and other productive and fixed assets. For example, if land is classified incorrectly based on old/outdated laws and surveys, then valuation of lands in current times will be incorrect (e.g., paddy land vs upland vs pasture land etc). If certain assets are not classified as economic assets then they may not be compensated at all (e.g., trees).
	(3) Life span of buildings on the land, model of construction and market price;	Section 37 of the Law indicates an examination and recording of 'life span of buildings on the land'. Although not explicit this may be interpreted as a requirement for taking into account depreciation in relation to a building. It is not recommended to include depreciation in asset / building valuations as it is inconsistent with the concept of "full replacement costs". Therefore, clear guidance on valuation as well as the valuation principles or approach should be provided following an accepted methodology.
<b>Chapter (7)</b>		
<b>Resettlement and Rehabilitation of Socio-Economic Life</b>		
	This chapter forms main section focused on livelihood restoration and improvement of standards of living, and as such a general recommendation is to give further more concise consideration to setting minimum standards and other safeguards on the resettlement process in this chapter.	
45.	For the people required resettlement and rehabilitation of socio-economic life, even when the proposed land was handed over to the proposed person if he was not ready to do anything for the affected persons at such a time the proposed person shall arrange for the affected persons with his own expenses for temporary staying as agreed and decided between the affected persons and the proposed person.	This section 45 appears to suggest that land could be handed over even where no arrangements have been made for resettlement and rehabilitation. This does not appear consistent with the rest of the provisions of the Law. The Law should ensure that displacement is subject to having transitional arrangements in place and/or compensation being paid.
48.	The Union Level and all levels of Region or State Working Committees shall supervise the condition that can affect women, children, ethnic group, traditionally owned people and vulnerable people.	These provisions on vulnerable persons should be more explicit in the Law so that they are duly safeguarded in the resettlement and rehabilitation process. Such vulnerable sectors may also include those below the poverty line, the landless, the elderly, disabled and persons without legal title to land.



**Chapter (8)**  
**Urgent Land Acquisition**

49.	<p>In the following situation for requirement of land acquisition, the land Acquisition Implementation Team can take possession of land acquisition urgently beyond 15 days for public purpose in spite of not paying compensation and aggrieved money after land acquisition order issued by the Government.</p> <p>(a) Requirement of settlement for the matters of the State defense and security under emergency condition.</p> <p>(b) Requirement of a certain land due to sudden changes of the ways of trade, transport and unpredictable circumstances.</p> <p>(c) Requirement of a certain land for public trading affairs and emergency communication.</p> <p>(d) Requirement of a certain land for the public to move and resettlement due to the condition of land slide, flood, storm and other natural disaster.</p> <p>(e) Requirement of a certain land for urgent settlement under the decision of the Pyidaungsu Hluttaw and the Union Government.</p>	<p>This chapter of the Law provides for urgent acquisitions. This is a matter that has proven troublesome in application in many other countries where it is utilised, particularly if resorted to frequently. This seems to be a carry forward from the Land Acquisition Act 1894.</p> <p>If however, it is seen as necessary to maintain this provision, measures could be thought of to reduce the adverse impact on those affected. These could include attempts at negotiation with the affected persons and where agreement could be reached, payment prior to displacement etc. A clear decision would have to be made by the Government that this is a case requiring such urgent acquisition prior to the Land Acquisition Implementation Team taking such steps. In such event, measures may be required to ensure availability of funds for compensation, rehabilitation and resettlement based on a preliminary survey.</p>
50.	<p>With reference to the land for urgent land acquisition, the following lands shall be inspected and confiscated as for priority.</p> <p>(a) The previously planned lands for emergency matters by the government;</p> <p>(b) The least affected lands for public interest;</p> <p>(c) Land not used for anything in spite of having right to use;</p>	
51.	<p>With reference to the land to be confiscated, entering the land and acquisition shall not be done without information of the relevant person 48 hours ahead.</p>	
52.	<p>(a) In spite of not drawing compensation and aggrieved money in time, after being confiscated, like normal acquisition, compensation and aggrieved money shall be calculated and provided. Moreover, relocation and establishment of social and economic activities need to be continued.</p> <p>(b) Separate compensation shall be provided, in case of certain loss for immediate acquisition.</p>	

<b>Chapter (9)</b> <b>Temporary Land Acquisition</b>		
53.	<p>Temporary land acquisition shall be carried out for the following with approval of the Union Government.</p> <p>(c) The matters concerning temporary use of during the project undertaken by local and foreign companies under an agreement of the government;</p>	<p>In the case of private sector involvement, temporary land acquisition should be supervised by the relevant Government authority but lease rights and price paid by companies should be at market prices and formal documentation drawn up and recorded with the relevant government authority. Typically, sites for contractor camps etc. are negotiated with land owners, be they customary or formal land owners. However, to avoid the risk of asymmetries of power and absence of transparent information about market prices, the rules and regulations accompanying the law should provide relevant guidance or establish mechanisms for such land owners to obtain expert support during negotiations.</p>
<p>The resettlement and rehabilitation effort itself could be seen as a development activity for the affected persons in order to provide them with better facilities etc.</p>		
<p>Monitoring the implementation of the resettlement and rehabilitation measures could also be a responsibility of the relevant authorities.</p>		

<b>Chapter (10)</b> <b>Re-occupation of the Transferred Land by the State</b>		
61.	<p>If government, department and organisations that confiscated the land to undertake some activities for public purpose do not use the confiscated land or not need to be used, or not have the reasons to continue using, the land shall be returned to the State systematically. For this purpose, they have no right to claim anything from the State.</p>	<p>There should be a defined time frame within which the land should be utilised. There should also be provision that such land is ultimately returned to the original land holder or customary user(s).</p>

## **Annex 1: Indian Land Acquisition Act, 2013 – Definitions of “Public Purpose”**

### **RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013**

**(also known as The Land Acquisition Act 2013)**

#### **Section 2 – Application of Act**

2.(1)The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:–

- a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
- b) for infrastructure projects, which includes the following, namely:–
  - (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;
  - (ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers\' cooperative or by an institution set up under a statute;
  - (iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;
  - (iv) project for water harvesting and water conservation structures, sanitation;
  - (v) project for Government administered, Government aided educational and research schemes or institutions;
  - (vi) project for sports, health care, tourism, transportation or space programme;
  - (vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
- c) project for project affected families;
- d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;
- e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;
- f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:–

- a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);
- b) for private companies for public purpose, as defined in sub-section (1);
  - (i) private companies, the prior consent of at least eighty per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3;

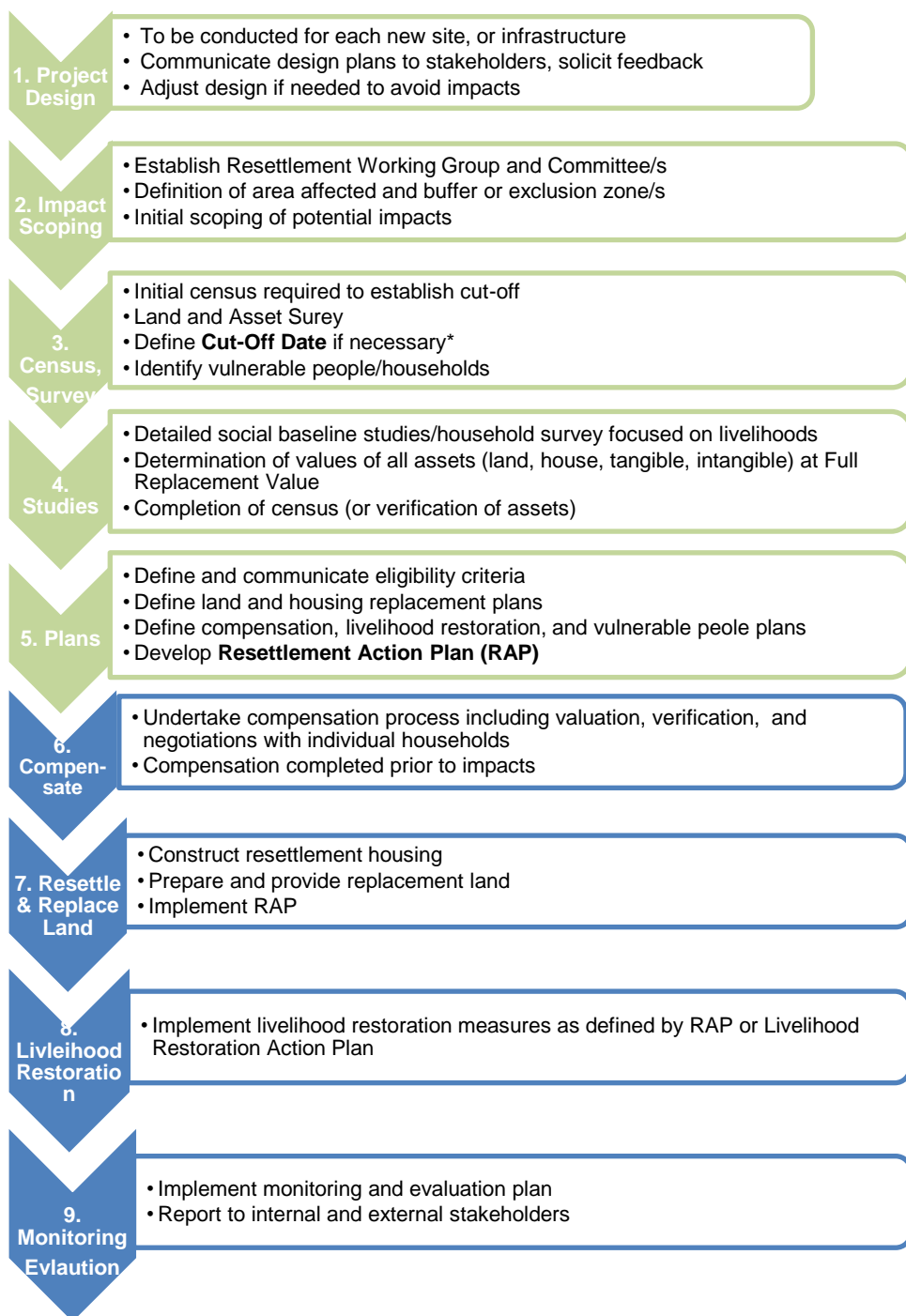
- (ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,

shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer prevailing in such Scheduled Areas.

## Annex 2: Land Acquisition and Resettlement Process



**Ongoing  
Negotiations  
and  
Stakeholder  
Engagement  
(AT EACH  
STEP)**